

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

COUNTRY INNS & SUITES BY
CARLSON, INC.,

Plaintiff,

vs.

DONALDSON HOTELS, INC.,

Defendant.

Civil No. 10-cv-2037-RHK-FLN

**REPORT AND
RECOMMENDATION**

This matter came on for hearing on January 5, 2012 on Plaintiff Country Inns & Suites By Carlson, Inc.'s Motion for Sanctions and/or Default Judgment (ECF No. 37) against Defendant Donaldson Hotels, Inc. The Court issued a Report and Recommendation on Plaintiff's motion on January 24, 2012. (ECF No. 46.) The Court found that Defendant, a corporation, had failed to retain counsel as previously ordered by this Court on October 5, 2011. The Court further noted that Defendant had not responded to discovery requests originally served on February 4, 2011. The Court found that Defendant had willfully and purposefully neglected this case and recommended that default be entered against Defendant pursuant to Rules 37 and 55 of the Federal Rules of Civil Procedure.

In its prior Report and Recommendation, the Court did not address the counterclaim asserted by Defendant. (ECF No. 13.) In light of its finding that Defendant has failed to comply with this Court's order to retain counsel and has willfully and purposefully neglected this case, the Court now further recommends that Defendant's counterclaim be dismissed without prejudice.

Based upon the foregoing, and all the files, records and proceedings herein, **IT IS HEREBY RECOMMENDED** that:

1. The counterclaim of Defendant Donaldson Hotels be **DISMISSED with prejudice**; and
2. **JUDGMENT BE ENTERED ACCORDINGLY.**

DATED: February 10, 2012

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **February 24, 2012**, written objections which specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within fourteen (14) days after service thereof. All briefs filed under the rules shall be limited to 3,500 words. A judge shall make a de novo determination of those portions to which objection is made.

Unless the parties are prepared to stipulate that the District Court is not required by 28 U.S.C. § 636 to review a transcript of the hearing in order to resolve all objections made to this Report and Recommendation, the party making the objections shall timely order and cause to be filed by **February 24, 2012**, a complete transcript of the hearing.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.